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NC: 2023:KHC-D:10066-DB

MFA No. 100456 of 2021

C/W MFA No. 103226 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 4TH DAY OF SEPTEMBER, 2023

PRESENT

THE HON'BLE MR JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

MISCELLANEOUS FIRST APPEAL NO.100456 OF 2021 (MV-D)

C/W

MISCELLANEOUS FIRST APPEAL NO.103226 OF 2023 (MV-D)

IN MFA NO. 100456 OF 2021

BETWEEN:

THE BRANCH MANAGER
MICRO OFFICE,
UNITED INDIA INSURANCE CO. LTD.,
MUKATLI BUILDING, HANGAL ROAD,
HAVERI-581112
REPRESENTED BY ITS
REGIONAL OFFICE,
TP HUB, NK COMPELX,
KESHWAPUR HUBBALLI,
THROUGH ITS DEPUTY MANAGER.

...APPELLANT



(BY SRI N.R. KUPPELUR, ADVOCATE)

AND:

1. SMT. HULIGEMMA W/O. LATE HANUMANTAPPA
AGE: 41 YEARS, OCC: HOUSEHOLD WORK,

SINCE DECEASED
RESPONDENT NOS. 2 TO 4 ARE ALREADY
ON RECORD AS LEGAL REPRESENTATIVES
OF DECEASED RESPONDENT NO.1.



2. HANUMANTAPPA S/O. ERAPPA
AGE: 46 YEARS, OCC: NIL,
3. B WANI D/O. HANUMANTAPPA
AGE: 20 YEARS, OCC: STUDENT,
4. B NANDINI D/O. HANUMANTAPPA
AGE: 17 YEARS, OCC: STUDENT,

SINCE THE RESPONDENT NO. 4 IS MINOR
REPRESENTED BY HER
MINOR GUARDIAN NATURAL
MOTHER I.E, RESPONDENT NO.1

RESPONDENT NO. 1 TO 4 ARE
R/O: SHIVAJI NAGAR,
4TH CROSS, HAVERI.
C/O. R.V. PATIL, SHIVAJI NAGAR,
3RD CROSS, HAVERI-591112.

5. SREEDHAR K S/O. NARAYANACHAR K.
AGE: MAJOR, OCC: BUSINESS,
R/O: H.NO. 352, 10TH MAIN,
BSK, MUKKERI ONI, 1ST STAGE,
2ND BLOCK, BENGALURU-560050.

...RESPONDENTS

(BY SRI U.G. KATTIMANI, ADVOCATE FOR R2 TO R4;
R2 TO R4 ARE LRS OF DECEASED OF R1;
NOTICE SERVED TO R5)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER
SECTION 173(1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO
SET ASIDE THE JUDGMENT AND AWARD DATED 03.07.2020
PASSED IN MVC NO.160/2019 ON THE FILE OF THE PRINCIPAL
SENIOR CIVIL JUDGE AND MOTOR ACCIDENT CLAIMS
TRIBUNAL, HAVERI.



IN MFA NO. 103226 OF 2023

BETWEEN:

1. HANUMANTHAPPA
S/O. ERAPPA
AGE: 49 YEARS, OCC: NIL,
2. B. VANI
D/O. HANUMANTHAPPA,
AGE: 23 YEARS, OCC: STUDENT,
3. B. NANDINI
D/O. HANUMANTHAPPA
AGE: 19 YEARS, OCC: STUDENT,

ALL ARE R/O: SHIVAJI NAGAR,
4TH CROSS, HAVERI,
C/O. R V PATIL, SHIVAJI NAGAR,
III CROSS, HAVERI,
TQ AND DIST HAVERI 581112.

...APPELLANTS

(BY SRI U.G. KATTIMANI, ADVOCATE)

AND:

1. SREEDHAR K. S/O NARYANACHAR K,
AGED 29 YEARS, OCC: BUSINESS,
R/O: H.NO 352, 10TH MAIN BSK,
MUKKERI ONI, 1ST STAGE, 2ND BLOCK,
BENGALURU 560050.
2. THE BRANCH MANAGER,
MICRO OFFICE,
UNITED INDIA INSURANCE CO. LTD.,
MUKATLI BUILDING
HANGAL ROAD HAVERI 581112.

...RESPONDENTS

(BY SRI N.R. KUPPELUR, ADVOCATE FOR R2)



THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION 173 (1) OF MOTOR VEHICLES ACT, 1988, PRAYING TO ALLOW THIS APPEAL AND CLAIM AND ENHANCE THE COMPENSATION AMOUNT OF RS.66,05,000/- WITH COSTS AND PROPER INTEREST FROM THE DATE OF PETITION, TILL THE REALISATION MODIFY THE AWARD DATED 03.07.2020 PASSED IN MVC NO.160/2019 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL AND PRINCIPAL SENIOR CIVIL JUDGE, HAVERI.

THESE APPEALS, COMING ON FOR ORDERS, THIS DAY, **BASAVARAJA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Both these appeals are against the judgment and award dated 03rd July, 2020 passed in MVC No.160 of 2019 by the Motor Accident Claims Tribunal, Haveri (for brevity, hereinafter referred to as the "Tribunal").

2. For the sake of convenience, the parties in this appeal are referred to as per their status and rank before the Tribunal.

3. Brief facts of the case are that on 04th October, 2016, deceased-Ashok, had been to Bankapur as per the direction of the Bank Manager and after completion of his work he was returning to Shiggaon on his motorcycle bearing Registration No.KA-23/Y-1874 and about 1.30 pm, while he



was riding the motorcycle on the left side of the road near Kursapur village cross, at that time a car bearing Registration No.KA-05/MJ-4096 came from back side in a high speed and hit the motorcycle, resulting in throwing the said Ashok United from the motorcycle. Due to the impact, Ashok sustained fatal injuries and died on the spot. The body was taken to Government Hospital and after post-mortem was handed over to the family members of deceased. It is contended that prior to accident, the deceased was hale and healthy and was age about 26 years. He was working as Senior Officer in IDFC Bank, Shiggaon and was getting salary of Rs.23,341/- per month plus bonus and other perks. There was every chance of he being promoted as Manager and his future prospects were bright. Because of the sudden and accidental death of the deceased, the family has lost the only bread earner. It is further contended that the accident occurred due to the rash and negligent driving of the car by its driver, hence the respondent No.1 being the owner and respondent No.2 being the insurer are jointly and severally liable to pay compensation. On all these grounds the petitioners preferred claim petition.



4. After service of notice, respondents appeared through their counsel and filed separate objections contending that the rider of the motorcycle was riding the motorcycle without wearing helmet on the left side of the road but, suddenly took right turn without giving any signal which was the cause of the accident. Respondent No.2 contended that the claim made by the petitioners is excessive and without any basis. The car was insured and the policy was in force from 22nd April 2016 to 21st April, 2017 and was subject to terms and conditions of the policy. The driver of the car was driving the car without driving licence and thereby the respondent No.1 has violated the policy conditions and hence respondent No.2 is not liable to pay compensation.

5. Based on the pleadings, the Tribunal framed following issues for its consideration:

1. Whether the petitioners prove that on 04.10.2016 at about 1.30 p.m., when deceased Ashok S/o. Hanumanthappa Valmiki was proceeding on motorcycle No.KA-23/Y-1874 on NH-4 Road near Kursapur cross, Shiggaon, the driver of Car No.KA-05/MJ-4096 drove the same in rash and negligent manner and dashed to the deceased



and caused accident thereby he succumbed to the injuries as pleaded in the petition?

2. Whether the respondent No. 1 and 2 proves that they are not liable to pay the compensation for the reasons mentioned in their objection statement?
3. Whether the petitioners are entitled for compensation as prayed in the petition?
4. What order or award?

6. To prove the case of petitioners, petitioner No.1 examined herself as PW1 and examined the Manager of IDFC Bank as PW2 and got marked Exhibits P1 to P18. On behalf of respondents, the Driver and the Manager of Insurance Company were examined as RW1 and RW2 and got marked one document as Exhibit R1.

7. Upon hearing the arguments of both the parties, the Tribunal answered the issues as under:

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|-------------|--|
| Issue No.1: | In the affirmative |
| Issue No.2: | In the negative. |
| Issue No.3: | Partly in the affirmative |
| Issue No.4: | As per final order, for the following. |



8. In view of the above finding, the Tribunal allowed the petition in part and awarded compensation of Rs.38,95,000/- with interest at the rate of 6% per annum from the date of petition till realisation.

9. Being aggrieved by the impugned judgment and award United India Insurance Company Limited has preferred Miscellaneous First Appeal No.100456 of 2021 challenging the quantum and liability. Being not satisfied with the compensation awarded by the Tribunal, the Claimants have preferred Miscellaneous First Appeal No.103226 of 2023 seeking enhancement in compensation.

10. Sri N.R. Kuppelur, learned counsel appearing for the Insurance Company submits that the Tribunal has committed error in law in fixing the liability against the Insurance Company holding that the accident occurred due to sole negligence on the driver of the car. He submits that the spot mahazar and the evidence of RWs1 and 2 specifically prove that the accident occurred on the middle of the road and the deceased rider of motorcycle was also rash and negligent in riding and was equally responsible for the cause of accident.



This aspect is not considered by the Tribunal. Further he submits that the Tribunal ought to have considered the contents of spot mahazar and evidence of RWs1 and 2 and the manner of accident and ought to have fixed the negligence to the extent of 50:50 on both the vehicles involved in the accident. It is further submitted that the Tribunal committed an error in deducting one-third instead of deducting 50% towards the personal expenses of the deceased since the deceased was bachelor. On all these grounds he prays for allowing the appeal.

11. As against this learned counsel appearing for the claimants submits that the Tribunal has properly appreciated the evidence on record in accordance with law and facts as to the liability of the Insurance Company, but, the Tribunal has committed an error in not awarding just and proper compensation in accordance with law. On these grounds he sought to dismiss the appeal preferred by the Insurance Company and sought to allow the appeal filed by the claimants and enhance the compensation.



12. Having heard the learned counsel for the parties, the following points would arise for our consideration in these appeals:

1. Whether the Insurance Company has made out a ground to interference with the impugned judgment and award as to the quantum of compensation and also the liability of Insurance Company?
2. Whether the claimants are entitled for enhancement of compensation as sought for?
3. What order or award?

13. Our answer for the above points are as under:

Point No.1: in the negative;

Point No.2: partly in the affirmative;

Point No.3: as per final order

14. We have carefully examined the evidence on record. PW1 has reiterated the averments made in the claim petition. PW2-Sreedhar, who is eye-witness to the accident, has deposed in his evidence that the accident occurred due to rash



and negligent act on the part of the driver of car. The documentary evidence reveals that based on the complaint a case was registered against the driver of the car for commission of offence punishable under Sections 279 and 304A of Indian Penal Code. Investigating Officer has also issued notice under Section 133 of Motor Vehicles Act, 1988. On thorough investigation, Investigating Officer submitted charge sheet against the driver of the car for commission of offence punishable under Sections 279 and 304A of the Indian Penal Code. The driver of the offending vehicle examined as RW1. He has deposed in his evidence that due to the negligent act on the part of the motorcycle the accident had occurred. But during the course of cross-examination, he has clearly admitted that he has not questioned the charge sheet submitted by police against him. He has also admitted that he was having driving licence as on the date of accident and the offending vehicle was insured with the Insurance Company. RW2-Sridhar has deposed in his evidence that the accident occurred due to negligence of the rider of the motorcycle. However, he has admitted that he has not questioned the charge sheet submitted by the Investigating Officer. The Tribunal has



properly appreciated the evidence on record, in accordance with law and given its finding. On re-appreciation of evidence on record, we do not find any legal infirmities/illegalities in the opinion expressed by the Tribunal.

15. With regard to quantum of compensation is concerned, it is not in dispute that deceased Ashok was aged 26 years as on the date of accident and was working as Senior Officer in IDFC Bank and was drawing Rs.23,341/- plus yearly bonus and perks. The petitioners have produced Exhibit P4- post mortem report; Exhibit P13-driving licence of deceased. According to the P13-Driving licence, the date of birth is shown as 22nd June 1990. Same is not disputed by the respondents. The Branch Manager of IDFC Bank is examined as PW1 and produced appointment letter as per Exhibit P19 and also produced Pay slips as per Exhibits P20 to P27. Perusal of Exhibits P11 reveals that the salary of the deceased for May 2016 is Rs.23,341/-. Exhibit P22 is the salary slip for the month of April shows that the salary of the deceased for the month of April 2016 is Rs.22,247/-; Exhibit P24 is the salary for the month of June 2016 which reveals the salary as Rs.22,794/-; as per Exhibit P25 is salary slip for the month of



July, 2016 at Rs.22,794/-; Exhibit P26 is August 2016 salary for Rs.21,294/- Exhibit P27 is September 2016 salary for Rs.20,650/-. Accordingly, it is just and proper to assess the salary at Rs.23,000/- per month. As per the evidence of Hon'ble Supreme Court in the case of NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS reported in AIR 2017 SC 5157, 50% is to be added towards future prospects. Accordingly, the monthly income of the deceased would come to Rs.34,500/-. The evidence on record reveals that petitioners 3 and 4 are the unmarried sisters of the deceased who were entirely dependent on the earnings of the deceased. Hence, considering the dependency of the petitioners, the Tribunal has rightly deducted one-third towards the personal expenses of the deceased. As per the judgment of the Hon'ble Supreme Court in the case of SARLA VERMA AND OTHERS v. DELHI TRANSPORT CORPORATION AND ANOTHER reported in (2009)6 SCC 121, the appropriate multiplier to the age of deceased would be 17 and the same is rightly taken by the Tribunal. Accordingly, the loss of dependency would come to Rs.46,57,932/- (Rs.22,833/- x 12 x 17). Keeping in mind the decisions of Hon'ble Supreme Court in the case of SARLA



VERMA, in the case of PRANAY SETHY and in the case of MAGMA GENERAL INSURANCE COMPANY LIMITED v. NANU RAM AND OTHERS reported in (2018)18 SCC 130, the claimants are entitled for compensation as under:

Sl.No.	Head	Amount (Rs.)
1.	Loss of dependency	46,57,932.00
2.	Loss of consortium (Rs.40,000 x 4)	1,60,000.00
3.	Towards loss of estate	15,000.00
4.	Towards transportation of dead body and funeral expenses	15,000.00
	Total	48,47,932.00

Accordingly, we answer Point No.2, partly in the affirmative.

Regarding Point No.3:

15. For the aforesaid reasons and discussions, we proceed to pass the following:

1. Miscellaneous First Appeal No.100456 of 20221 preferred by Insurance Company is dismissed;
2. Miscellaneous First Appeal No.103226 of 2023 preferred by claimants is allowed in part;
3. Judgment and award dated 03rd July, 2020 passed in MVC No.160 of 2019 by the Motor Accident Claims Tribunal, Haveri, is modified by enhancing



the compensation to Rs.48,47,932/- as against Rs. 38,95,000/- awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till realisation;

4. Respondent-Insurance Company shall deposit the compensation amount within sixty days from the date of receipt of certified copy of this judgment;
5. Amount in deposit if any, shall be transmitted to the Tribunal forthwith;
6. Apportionment and disbursement of the compensation amount shall be as per the order of the Tribunal;
7. Registry to draw award accordingly;

Sd/-
JUDGE

Sd/-
JUDGE